

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

HAROLD C. VALERY, M.D.
350 The Village, #103
Redondo Beach, California

Physician and Surgeon
Certificate No. A-35020,

Respondent.

NO. D-2936

L-29781

OFFICE OF ADMIN. HEARINGS	
COMPT. EXHIBIT	2
AGENCY	Med
FILE NO.	L-37728
DATE	4-287

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Division of Medical Quality,
Board of Medical Quality/Assurance as its Decision in the
above-entitled matter.

This Decision shall become effective on August 7, 1984.

IT IS SO ORDERED July 5, 1984.

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
STATE OF CALIFORNIA


BARRY WARSHAW, M.D.
President

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BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	
HAROLD C. VALERY, M.D.)	NO. D-2936
350 The Village, #103)	
Redondo Beach, California)	L-29781
)	
Physician and Surgeon)	
Certificate No. A-35020,)	
)	
Respondent.)	

PROPOSED DECISION

This matter came on regularly for hearing before Milford A. Maron, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on April 6, 1984. William L. Marcus, Deputy Attorney General, appeared on behalf of the Complainant. Respondent Harold C. Valery, M.D., was represented by his counsel, Thomas S. Byrnes, Esq. Oral and documentary evidence having been introduced, the matter stood submitted and the Administrative Law Judge applying the standard of proof of clear and convincing evidence to a reasonable certainty finds the following facts:

I

A. Robert Rowland, as the Executive Director of the Board of Medical Quality Assurance made the Accusation in his official capacity.

B. Kenneth Wagstaff, Complainant, is the Executive Director of the Board of Medical Quality Assurance and made the First Amended and Supplemental Accusation in his own capacity.

II

On or about March 14, 1980, respondent Harold C. Valery, M.D. was issued physician and surgeon certificate No. A-35020 by the State Board. Said certificate is currently in good standing.

III

"It was stipulated between the parties and is found to be true, as follows:

A. On or about October 17, 1983, in Case No. A 374171, People v. Lipton, et al., in Los Angeles Superior Court, respondent pled nolo contendere to and was convicted of one count of violating Health and Safety Code Section 11154.

B. Respondent was sentenced to 3 years probation and ordered to pay a fine of \$5,000.

C. Respondent was specifically convicted of willfully and unlawfully, and not in the regular practice of his profession, prescribe, administer, dispense, and furnish a controlled substance, to wit, quaaludes, to a person not under his treatment for a pathology and condition other than addiction to a controlled substance contrary to the requirements of Health and Safety Code Section 11154."

IV

Respondent testified in his own behalf and established the following:

1. That he was a Lieutenant Commander in the U.S. Navy at the time of the event.
2. That he was heavily in debt due to the cost of his medical training.
3. Because of those latter obligations he accepted a position as a physician, after hours, with a stress clinic.
4. That he worked but four days in said clinic and terminated before being arrested. That it was at the clinic that he prescribed his first quaaludes.
5. That because of his arrest he was immediately suspended from medical duties by the U.S. Navy and subsequently discharged as "less than honorable."
6. He is now employed in a group setting in the general practice of medicine.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Cause for disciplinary action exists against respondent pursuant to Sections 2234(b), 2242(a) and 2238 of the Business and Professions Code, in conjunction with Section 11154 of the Health and Safety Code and 21, C.F.R., Section 1306.04(a).

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The physician's and surgeon's certificate (No. A-35020) heretofore issued to respondent Harold C. Valery, M.D., is hereby revoked; provided, however, said revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.
2. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.
3. Respondent shall comply with the Division's probation surveillance program.
4. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.
5. In the event respondent should leave California to reside or to practice outside the State, respondent must notify the Division in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.
6. Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during probation, showing all the following:
1) the name and address of the patient, 2) the date, 3) the character and quantity of controlled substances involved, and 4) the pathology and purpose for which the controlled substance was furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Division or its designee, upon request.

7. Within sixty (60) days of the effective date of this decision, respondent shall submit to the Division for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agent for at least twenty (20) hours a month for the first six (6) months of probation.

8. Respondent is prohibited from engaging in solo practice. Within thirty (30) days of the effective date of this decision, respondent shall submit to the Division, and receive its prior approval, for a plan of practice limited to a supervised, structured environment in which respondent's activities will be overseen and supervised by another physician.

* * * * *

Upon successful completion of probation, respondent's certificate will be fully restored. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on April 4, 1984, at Los Angeles, California, and recommend its adoption as the decision of the Division of Medical Quality, Board of Medical Quality Assurance.

DATED: Apr 9, 1984

Milford A. Maron
MILFORD A. MARON
Administrative Law Judge
Office of Administrative Hearings

MAM:mh

GEORGE DEUKMEJIAN, Attorney General
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

NO. D-2936

ACCUSATION

HAROLD C. VALERY, M.D.
350 The Village, #103
Redondo Beach, California

Physician and Surgeon
Certificate No. A-35020,

Respondent.

Complainant alleges that:

1. He is Robert Rowland, Executive Director of the
Board of Medical Quality Assurance (hereinafter "the board")
and makes and files this accusation solely in his official
capacity.

2. On or about March 14, 1980, Harold C. Valery,
M.D. (hereinafter "respondent") was issued physician and
surgeon certificate No. A-35020 by the board. Said
certificate is currently in good standing.

1 3. Business and Professions Code section 2234^{*/}
2 provides the Division of Medical Quality (a division of the
3 board) may discipline any licensee for unprofessional conduct.

4 4. Section 2242, subdivision (a), provides pres-
5 cribing, dispensing, or furnishing dangerous drugs as defined
6 in section 4211 without a good faith prior examination and
7 medical indication therefor, constitutes unprofessional conduct.

8 5. Section 2238 provides, in pertinent part, that a
9 violation of any federal regulation or state statute regulating
10 narcotics, dangerous drugs or controlled substances constitutes
11 unprofessional conduct.

12 6. Health and Safety Code section 11154 provides
13 that, except in the regular practice of his profession, no
14 person shall prescribe, administer, dispense, or furnish, a
15 controlled substance to or for any person not under his treat-
16 ment for a pathology or condition, other than addiction to a
17 controlled substance, except as provided in Health and Safety
18 Code section 11000 et seq.

19 7. 21 Code of Federal Regulations 1306.04, sub-
20 division (a), provides that a prescription for a controlled
21 substance, to be effective, must be issued for a legitimate
22 medical purpose by an individual practitioner acting in the
23 usual course of his professional practice. Regulation 1306.04(a)
24 further provides that an order purporting to be a prescription
25 not issued in the usual course of professional treatment is not

26 * All statutory references hereinafter are to the Business
27 and Professions Code unless otherwise stated.

1 a prescription within the meaning and intent of Title 21,
2 United States Code section 829.

3 8. At all times pertinent herein Quaalude was a
4 dangerous drug and a federally scheduled controlled substance.

5 9. Respondent is subject to disciplinary action
6 pursuant to sections 2234(b), 2242(a) and 2238, in conjunction
7 with the Health and Safety Code section 11154 and 21 C.F.R.
8 section 1306.04(a), as follows:

9 A. On or about November 14, 1981, at the
10 Pacific Medical Stress Center, 6317 Wilshire
11 Boulevard, Los Angeles, respondent prescribed
12 30 Quaalude 300 mg. to Toni [REDACTED].

13 B. All of the above were prescribed without a
14 good faith prior medical examination and without
15 medical indication.

16 C. All of the above were prescribed to a person
17 not under respondent's treatment for any pathology
18 or condition.

19 D. None of the above were prescribed for a
20 legitimate medical purpose or within the usual course
21 of respondent's practice.

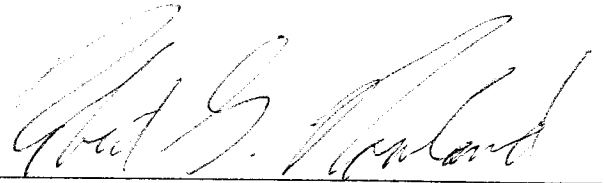
22 WHEREFORE, complainant prays a hearing be held on the
23 matters alleged hereinabove and, following said hearing, the
24 division issue a decision:

25 1. Revoking or suspending physician and surgeon
26 certificate No. A-35020, heretofore issued to respondent; and

27 /

1 2. Taking such other and further action as the
2 division may deem proper.

3 Dated: September 8, 1982 .

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8 ROBERT G. ROWLAND
9 Executive Director
10 Board of Medical Quality Assurance
11 State of California

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Complainant

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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	NO. D-2936
)	
)	FIRST AMENDED AND
)	SUPPLEMENTAL
HAROLD C. VALERY, M.D.)	ACCUSATION
350 The Village, #103)	
Redondo Beach, California)	
)	
Physician and Surgeon)	
Certificate No. A-35020,)	
)	
Respondent.)	

Complainant alleges that:

1. He is Kenneth Wagstaff, Executive Director of the Board of Medical Quality Assurance (hereinafter "the board") and makes and files the within charges solely in his official capacity.

2. Respondent is subject to disciplinary action pursuant to sections 2234 and 2236 and 2237 as follows:

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1.

1 A. On or about October 17, 1983, in Case
2 No. A 374171, People v. Lipton, et al., in Los
3 Angeles Superior Court, respondent pled nolo
4 contendere to and was convicted of one count of
5 violating Health and Safety Code section 11154.

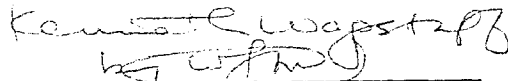
6 B. Respondent was sentenced to 3 years
7 probation and ordered to pay a fine of \$5,000.

8 C. The facts and circumstances are that
9 on November 14, 1981, respondent prescribed
10 30 Quaalude 300 mg. to Toni [REDACTED] who was not
11 then under respondent's treatment for any
12 pathology or condition.

13
14 WHEREFORE, complainant prays a hearing be held on
15 the matters alleged hereinabove and, following said hearing,
16 the division issue a decision:

- 17 1. Revoking or suspending physician and surgeon
18 certificate No. A-35020, heretofore issued to respondent; and
19 2. Taking such other and further action as the
20 division may deem proper.

21 Dated: March 13, 1984

22
23 

24 KENNETH WAGSTAFF
25 Executive Director
26 Board of Medical Quality Assurance
27 State of California

Complainant